

Note from the Field

Arbitration of Landlord-Tenant Disputes at Fort Hood

*Lieutenant Colonel Gene Silverblatt
Office of the Staff Judge Advocate, 4003d Garrison Support Unit
III Corps & Fort Hood*

*Robert Sullivan
Office of the Staff Judge Advocate
III Corps & Fort Hood*

Since 1989, Fort Hood has offered arbitration services to help area landlords and military tenants resolve disputes that otherwise might require court proceedings. Annually, ten to twelve soldiers take advantage of this free service where the stakes involved range from several hundred dollars to as high as \$1500. Those soldiers who use this procedure frequently save themselves court costs, time, and considerable trouble.

Soldiers and landlords may use the arbitration services by mutual agreement or under the Fort Hood Deposit Waiver Program.¹ Under the Deposit Waiver Program, participating soldiers apply for a waiver from local security or utility deposit requirements in exchange for agreeing to binding arbitration.² When clearing Fort Hood at the end of the soldier's tour, arbitration is used to resolve any unpaid rent or damage.

The Fort Hood arbitration program provides for the resolution of landlord and tenant disputes by a neutral arbitrator under the provisions of the Texas General Arbitration Act.³ The procedures apply to disputes arising from private transactions not involving the United States, the Army, or its agents; are limited to disputes involving at least \$100; and do not apply to criminal or disciplinary matters or matters of official business. The Chief, Administrative and Civil Law, III Corps and Fort Hood Staff Judge Advocate's office, supervises the proceedings.

Prior Settlement Efforts

To participate in Fort Hood's arbitration program, the parties must affirmatively show that mutual pre-arbitration efforts to resolve the dispute have failed. When a soldier-tenant is involved, there must be evidence that the soldier's chain-of-command also has been unsuccessful in resolving the dispute.

In addition to soldiers participating in the deposit fee waiver program, other parties may agree to resolve disputes through arbitration:

- (1) *before* a dispute by including a dispute resolution clause in the lease,⁴ or
- (2) *after* a dispute has arisen that is not covered by a lease provision, by agreeing in writing to submit the matter to the resolution procedures.

Where an existing lease provides an agreement to arbitrate, the application for arbitration must include a copy of the lease agreement as well as the standard agreement to arbitrate showing the signature of each party. In the case of a dispute without a pre-existing agreement to arbitrate, all parties must sign the application.

Either party may refuse to consent to arbitration or withdraw from the arbitration proceeding before an award occurs. Any party withdrawing after the commencement of arbitration, however, is liable for costs incurred.

The Hearing

The III Corps Staff Judge Advocate appoints a knowledgeable and neutral individual arbitrator from a panel of available arbitrators. To avoid conflicts of interest, no one may serve as an arbitrator if he has prior knowledge of the facts of the dispute or any personal interest that might prejudice the decision. Either party to the dispute can challenge the appointment of an arbitrator on this basis.

1. FORT HOOD REGULATION 210-50, FORT HOOD DEPOSIT WAIVER PROGRAM (15 Jan. 1999).

2. *Id.*

3. TEX. CIV. PRAC. & REM. CODE ANN. § 171.001 (West 2000). See American Arbitration Association (visited May 3, 2000) <<http://www.adr.org>> (containing links to state arbitration laws).

4. One suggested form of a standard arbitration clause for a lease agreement involving security deposits is: "Any controversy or claim arising out of or relating to this agreement, or the breach of this agreement, shall be submitted to arbitration upon request of either party, and judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction."

The standard of proof is by preponderance of the evidence. Strict rules of evidence and rules of judicial procedure ordinarily are not observed, except to preserve decorum and good order. A party has the right to be represented by an attorney at the hearing, at no cost to the government, although ordinarily neither party has counsel present. The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing. Witnesses testify under oath. When necessary, the arbitrator visits the apartment or house covered by the lease to personally view and assess the evidence or alleged damage.

Remedies and Damage Awards

In the absence of a lease provision, the arbitrator applies the principles of equity in fashioning an appropriate remedy within the scope of the parties' arbitration agreement and the Texas General Arbitration Act. If the parties settle their dispute during the course of the arbitration, the arbitrator may enter any

award agreed upon by the parties at the time of the hearing. The arbitrator renders the award promptly and, unless otherwise agreed by the parties, not later than five working days after the hearing ends, or if an oral hearing has been waived, from the date of submission of the final statements and evidence to the arbitrator. Although the consent to arbitration states that it is binding, Fort Hood has no enforcement mechanism, so the prevailing party may ultimately have to resort to judicial enforcement.

Legal Assistance attorneys looking for an inexpensive way to help soldiers avoid the requirement to make security deposits should consider the Fort Hood Deposit Waiver Program as an alternative model. In addition, local community alternative dispute resolution services may be available to avoid litigation.⁵

5. For additional information on Landlord/Tenant Dispute Resolution Procedures, and examples, see the June 2000, *The Army Lawyer* ("Miscellaneous Administrative Information") at <<http://www.jagcnet.army.mil>>.

Appendix A

Landlord/Tenant Dispute Resolution Procedure

This provides rules for the resolution of landlord/tenant disputes among military personnel and other eligible personnel by a neutral arbitrator. These rules are applicable to disputes that arise from private transactions not involving the United States, the Army or its agent. These rules are limited to disputes involving at least \$100. These rules do not apply to criminal or disciplinary matters, or matters of official business.

1. Policy. To encourage the settlement of landlord/tenant disputes among eligible personnel. Personnel are encouraged to act reasonably and negotiate disputes privately if possible. If initial attempts at private settlement with chain of command involvement are unsuccessful, the parties may submit the dispute for resolution by arbitration.

2. Rules Not compulsory; Binding Effect of Award. Submission of landlord/tenant disputes to these procedures is voluntary. Individuals may elect to seek resolution in civilian court. However, if a dispute is submitted for resolution the arbitrator's decision is binding, except when:
 - a. The award was obtained by corruption, fraud or other undue means.
 - b. The rights of a party were substantially prejudiced by misconduct of the arbitrator.

3. Definitions.

a. "Arbitration" means a non-judicial determination of a disputed matter by a neutral person or persons under the provisions of the Texas General Arbitration Act.

b. An "Arbitrator" means a neutral person or persons to whom a disputed matter is submitted for arbitration. Arbitrators shall perform their duties without any service charge to the parties.

c. "Award" means the decision of the arbitrator(s) after consideration of the evidence presented by the parties.

d. "Dispute" means any question concerning obligations arising between the parties as a result of a lease agreement. This includes all questions relating to property damage or fees for such damage, nonpayment of rental fees and/or other charges, and other allegations involving breaches of a lease.

e. "Party" means a soldier or family member tenant or a landlord who has entered into a lease agreement. The United States and its agencies, officers, or employees, in their official capacity cannot be a "party" under these rules. A party may obtain the advice of an attorney, or be represented by an attorney during the course of the arbitration; however, attorneys are not required and parties are encouraged to present their own cases.

4. Administration. Arbitration proceedings are supervised by the III Corps Staff Judge Advocate, Chief, Administrative & Civil Law Division (SJA-C, ACL), and will conform to the requirements of the Texas General Arbitration Act.
5. Dispute Resolution Agreement. Parties may agree to resolve disputes through arbitration:
 - a. Before a dispute by inclusion of a disputes resolution clause in the lease, or
 - b. After a dispute has arisen which is not covered by a lease provision, by agreeing in writing to submit the matter to the resolution procedures.
 - c. Either party may refuse to consent to arbitration or withdraw from the arbitration proceeding prior to rendition of an award. Any party withdrawing, however, after the commencement of arbitration will be liable for costs incurred.
6. Form of Agreement for Future Disputes Involving Waiver Deposit Leases.

Standard Arbitration Clause. "Any controversy or claim arising out of or relating to this agreement, or the breach of this agreement, shall be submitted to arbitration upon request of either party, and judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction."

7. Form of Agreement for Disputes. Where there is no standard contractual.

"We, the undersigned parties, hereby agree to submit to arbitration, the dispute described above, under the rules set forth in The Fort Hood Dispute Resolution Procedure and the Texas General Arbitration Act. We agree the dispute may be submitted to an arbitrator selected by the SJA-C, ACL. We further agree that we will abide by and perform any award rendered by this arbitrator and that a judgment of the court having jurisdiction may be entered upon the award."

8. Panel. The panel of available arbitrators consists of knowledgeable and neutral individuals appointed by the SJA-C, ACL.

9. No Conflict of Interest.

a. No panel member may serve as arbitrator if he/she has prior knowledge of the facts of the dispute, or any personal interest, which might prejudice the decision.

b. A party may challenge the appointment of an arbitrator by demonstrating that the selectee has prior knowledge of the parties or the facts or a conflict of interest that would tend to prejudice the decision.

10. Rule of Law to be Used. The laws of the State of Texas shall be applied by the arbitrator.

Initiation of Arbitration Proceedings

11. Prerequisites. In order to participate in arbitration proceedings that parties must affirmatively show that mutual efforts to informally resolve the dispute have been unsuccessful. When a soldier tenant is involved in the dispute, there must be evidence that involvement by the tenant's chain of command has been unsuccessful in resolving the dispute.

12. Application. Arbitration is initiated by submitting a written application to Headquarters, III Corps, Staff Judge Advocate, Administrative & Civil Law Division, Fort Hood, Texas 76544-5008 (Building 1001, Room C222) or the Arbitration/Hearing Officer (Building 209, Room 205).
 - a. The application form is available at the Fort Hood Housing Referral Office, Building 108, Legal Assistance Offices, or Arbitration/Hearing Officer.

 - b. In the case of a pre-existing lease agreement to arbitrate, the application must include a copy of the lease agreement as well as the standard agreement to arbitrate showing the signatures of both parties.

 - c. In the case of a dispute without a pre-existing agreement to arbitrate, all parties must sign the arbitration application.

13. Notice: Assignment of Hearing Date.

- a. All parties to the arbitration will receive a notice of the proceedings. When an application is submitted, a hearing date will be set.
- b. A copy of the application, bearing the time and date of the hearing and the arbitrator, will be served personally or by certified, restricted delivery mail upon all parties to the dispute.
- c. The service or mailing of the application will provide each party with at least five days notice of the hearing. This notice requirement may be waived upon written agreement of all parties to the dispute. If a hearing is not set while the parties are present to submit their application, notice will be mailed to the respective parties.

14. Procedure.

- a. The arbitrator or co-arbitrators will preside over the hearing, and rule on the admission and exclusion of evidence and questions of hearing procedure.
- b. The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing. Strict rules of evidence and rules of judicial procedure ordinarily will not be observed. The testimony of witnesses shall be under oath. A party has the right to be represented by an attorney at the hearing, if desired. Soldiers desiring representation must obtain counsel at no cost to the government. Basic standards of decorum will

be recognized and the arbitrator will instruct on procedure at the time of the hearing. When necessary, the arbitrators may visit the apartment or house covered by the lease in order to personally view and assess the evidence.

c. Oral hearing may be waived by any or all parties and the matter submitted to the arbitrator on written statements, under oath, and any other documentary evidence.

d. Arbitration may proceed in the absence of a party, who, after notice and agreement to submit the dispute fails to appear. A soldier who is precluded from attending the scheduled hearing because of military duty will be granted a new hearing date upon receipt of a written request for delay signed by the soldier's commander.

e. The standard of proof to be used by the arbitrator will be one of the preponderance (or greater weight) of the evidence. In the absence of a lease provision as to remedies the arbitrator will apply the principles of equity.

The Award

15. Time. The arbitrator must render the award promptly and, unless otherwise agreed by the parties, not later than five working days from the date of the close of the hearing, or if oral hearing has been waived, from the date of submission of the final statements and evidence to the arbitrator.

16. Scope. The arbitrator may grant any remedy or relief which is deemed just and equitable and within the scope of the arbitration agreement of the parties and the Texas General Arbitration Act.

17. Settlement. If the parties settle their dispute during the course of the arbitration, the arbitrator may enter any award agreed upon by the parties at the time of the hearing.

18. Delivery of the Award. The placing of a copy of the award in the mail (certified, restricted delivery, return receipt requested) addressed to each of the parties at their last known address, or personal delivery at the time of the hearing or thereafter constitutes legal delivery of the award.

Appendix B

Landlord/Tenant Dispute Resolution Application for Arbitration & Docket Record

1. Names of parties, mailing addresses, organizations, and phone numbers:

Landlord: _____

Tenant: _____

Tenant's Commander: _____

Witnesses (if any): _____

2. Brief description of dispute:

a. (Tenant or Fort Hood Housing Referral completes) _____

b. (Landlord completes) _____

c. Tenant's commander completes) _____

3. Is this application based on a previous written lease agreement to submit to arbitration?

Yes ____ No ____ . If yes, attaché a copy of the agreement showing the signature of both parties.

All parties must sign this application below.

4. We, the undersigned parties, hereby agree to submit to arbitration, the dispute described above, under the rules set forth in the Fort Hood Landlord-Tenant Dispute Resolution Process.

We agree the dispute may be submitted to as arbitrator selected under the arbitration program.

Further, we agree that we will abide by and perform any award rendered by the arbitrator and that a judgment of the court having jurisdiction may be entered upon the award.

5. Having agreed to arbitration we request/waive the right to a 5-day notice of the Hearing.

Signature of Tenant

Landord/owner/agent

Signature of

Subscribed and sworn before me this ____ day of _____, 200_.

Signature

The arbitration hearing officer completes this section and returns a copy to each party.

Hearing Date: _____

Docket No.

Time: _____

Location: _____